

REQUIRED ELEMENTS OF VALID CONSENT FORM

| | HIPAA 45 CFR § 164.508 ("Authorization") | 42 CFR PART 2 §§ 2.31, 2.32 ("Consent") | IMHDDCA 740 ILCS 110/5 ("Consent") |
|---------------------------|---|--|--|
| <u>GENERAL USE</u> | <p>Generally uses consents for specific purpose.</p> <p>For treatment, payment and healthcare operations, HIPAA does not require a consent.</p> | Requires a consent for each purpose of disclosure. | <p>Requires a consent for each purpose of disclosure.</p> <p>Consent is limited by purpose AND duration of covered time.</p> |

| | HIPAA 45 CFR § 164.508 ("Authorization") | 42 CFR PART 2 §§ 2.31, 2.32 ("Consent") | IMHDDCA 740 ILCS 110/5 ("Consent") |
|--|---|---|--|
| <u>ELEMENTS AT A GLANCE</u> | <ul style="list-style-type: none"> • Name of patient • What information may be disclosed • Who may disclose the information • Who may receive the information • Purpose(s) for disclosure • Statement about revocation • Statement about refusing consent • Statement about expiration • Statement about redisclosure • Signature of patient • Date signed | <ul style="list-style-type: none"> • Name of patient • What information may be disclosed • Who may disclose the information • Who may receive the information • Purpose(s) for disclosure • Statement about revocation • Statement about expiration • Statement about redisclosure • Signature of patient • Date signed | <ul style="list-style-type: none"> • Name of patient • What information may be disclosed • Who may disclose the information • Who may receive the information • Purpose(s) for disclosure • Statement about revocation • Statement about refusing consent • Statement about expiration • Statement about inspection • Signature of patient • Signature of witness |

| <u>ELEMENT</u> | HIPAA 45 CFR § 164.508 ("Authorization") | 42 CFR PART 2 §§ 2.31, 2.32 ("Consent") | IMHDDCA 740 ILCS 110/5 ("Consent") |
|--|--|---|---|
| Name of patient | ✓ Must include name of patient | ✓ Must include name of patient | ✓ (Implied that need to know name of the person who is receiving mental health/developmental disabilities services) |
| What information may be disclosed | ✓ Must describe the information to be disclosed in a "specific and meaningful" way | ✓ Must describe how much and what kind of information may be disclosed | ✓ Must describe the "nature" of the information to be disclosed |
| Who may disclose the information | ✓ Persons or class of persons | ✓ Program or person | ✓ (Implied because this means the holder of the record) |
| Who may receive the information | ✓ Persons or class of persons | ✓ Name/title of individual or name of organization | ✓ Person or agency |
| Purpose(s) for disclosure | ✓ Must include purpose(s) for disclosure | ✓ Must include purpose(s) for disclosure | ✓ Must include purpose(s) for disclosure |
| Statement about revocation | ✓ Must inform patient of: right to revoke <u>in writing</u> , how to revoke, and any exceptions to revocation | ✓ Must inform patient of right to revoke at any time, except to extent program has already acted on it | ✓ Must inform patient of right to revoke at any time <u>in writing</u> ; if revoked, must be <u>signed by patient and by a witness</u> and such revocation not effective until person permitted to disclose receives it. |

| <u>ELEMENT</u> | HIPAA 45 CFR § 164.508 ("Authorization") | 42 CFR PART 2 §§ 2.31, 2.32 ("Consent") | IMHDDCA 740 ILCS 110/5 ("Consent") |
|--|---|---|--|
| Statement about refusing to consent | ✓ Must inform patient about covered entity's ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization | | ✓ Must inform patient about consequences of refusal to consent, if any |
| Statement about expiration | ✓ May expire: on specific date, after specific amount of time, or upon specific event | ✓ May expire: on specific date or upon occurrence of event or condition | ✓ <u>Must</u> expire on calendar date; if none given, only valid on the day consent is received by therapist |
| Statement about inspection/access of record by patient | (Though a statement about inspection/access is not required to be in a consent form, HIPAA gives patients rights of access under § 164.524.) | (Though a statement about inspection/access is not required to be in a consent form, 42 C.F.R. Part 2, § 2.23, does not prohibit patient access to his/her own records.) | ✓ Must inform patient about his/her right to inspect and copy his/her information to be disclosed |
| Statement about redisclosure (i.e. allowing the agency receiving the information to redisclose the information to another provider) | ✓ Must inform patient that information disclosed may be redisclosed by the receiving agency and no longer protected | ✓ Must include exact language: "This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient." | Though a statement about redisclosure is not required to be in a consent form, § 5(d) prevents redisclosure unless the patient specifically consents to it |

| <u>ELEMENT</u> | HIPAA 45 CFR § 164.508 ("Authorization") | 42 CFR PART 2 §§ 2.31, 2.32 ("Consent") | IMHDDCA 740 ILCS 110/5 ("Consent") |
|-----------------------------|--|--|---|
| Signature of patient | ✓ If personal representative signs, must also include description of authority to act | ✓ Must include signature of patient | ✓ Must include signature of patient |
| Signature of witness | | | ✓ Must include signature of witness |
| Date signed | ✓ Must include date signed | ✓ Must include date signed | |

| | HIPAA 45 CFR § 164.508 ("Authorization") | 42 CFR PART 2 §§ 2.31, 2.32 ("Consent") | IMHDDCA 740 ILCS 110/5 ("Consent") |
|---|---|---|---|
| <u>ADDITIONAL CONSIDERATIONS</u> | Must provide patient with copy of authorization/consent form. | Criminal justice consents under § 2.35 are very specific and also require that: 1. The duration is typically tied to the proceeding; 2. The disclosure authorizations are NOT revocable; and 3. The persons receiving the information can redisclose the information in connection with their official duties. | Blanket consents are not valid. Strict provisions about advance directives. Strict provisions about "breaking the glass" exception in the sole discretion of therapist when patient is unable to assert or waive rights (i.e. unconscious). |